

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:13-CV-00649-FL

**Amy Sparks, individually, and Robert D. Sparks, as Personal Representative of the Estate of Jarred B. Sparks,** )  
Plaintiffs, ) ) **WRONGFUL DEATH / SURVIVAL ACTION**  
vs. ) )  
**Oxy-Health, LLC and Oxy-Health Corporation,** ) )  
**Defendants.** ) )  
\_\_\_\_\_  
)

Plaintiffs, by and through undersigned counsel and pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, move this Honorable Court for an entry of default based on the pleadings filed in this case, this Motion, and the Affidavit of Default [ECF No. 11]. The basis for Plaintiffs' request for the entry of default is that Defendants Oxy-Health, LLC and Oxy-Health Corporation have failed to appear and plead or otherwise defend the Plaintiffs' allegations found in the Complaint filed with this Court. Defendants waived service of a summons in this matter and, in the executed "Waiver of the Service of Summons" forms, acknowledged that a default judgment would be entered against Defendants if an answer or motion under Rule 12 was not filed and served by November 12, 2013. To date, the Defendants have failed to file an answer, notice of appearance, motion, or other pleading in this matter. As such, Defendants are now, and have been, in default.

In the Complaint, Plaintiffs requested an amount of unliquidated damages based on the injuries sustained as a result of the claims alleged in this matter. Therefore, upon entry of default,

Plaintiffs, by and through their undersigned counsel, request that a jury determine the amount of damages at the next appropriate time and manner.

Notably, the instant matter was filed in this Honorable Court after Defendants argued in the Superior Court for the State of California for the County of Los Angeles that North Carolina was a more convenient forum than California for Defendants to defend the allegations against them. Given this argument and the fact that Defendants received a nearly identical Complaint in the California action on May 31, 2013, Defendants' failure to file an answer or otherwise defend is completely inexcusable and without good cause.

Respectfully submitted this 14th day of November, 2013,

**MOTLEY RICE LLC**

By: /s/ W. Christopher Swett  
Anne McGinness Kearse  
T. David Hoyle  
W. Christopher Swett  
Attorneys for Plaintiffs  
MOTLEY RICE LLC  
28 Bridgeside Boulevard  
Mount Pleasant, SC 29464  
Tel: (843) 216-9000  
Fax: (843) 216-9450  
cswett@motleyrice.com

Justin D. Bice  
Attorney for Plaintiffs  
BICE LAW LLC  
6000 Fairview Road, STE 1200  
Charlotte, NC 28210  
Justin@Bicelaw.us  
Tel: (704) 243-8778  
Fax: (704) 612-0273  
State Bar No. 38033  
Local Civil Rule 83.1 Counsel

## **CERTIFICATE OF SERVICE**

I, Lisa Ranaldo, a paralegal with the law firm of Motley Rice LLC, do hereby certify that I have this 14<sup>th</sup> day of November 2013 served a copy of the Motion for Entry of Default and Proposed Order on the individuals below by placing a copy of same in the United States Mail, postage prepaid and return address clearly indicated to the following address:

Parties Served:

<u>VIA CERTIFIED MAIL - RRR</u>	<u>VIA CERTIFIED MAIL - RRR</u>	<u>VIA CERTIFIED MAIL - RRR</u>
Mr. Wei C. Wong	Mr. Hemant Desai	Jeffrey S. Behar, Esq.
Oxy-Health Corporation	Oxy-Health, LLC	Ford, Walker, Haggerty &
716 S. Garfield Avenue	160 E. Arrow Highway	Behar, LLP
Alhambra, California 91801	San Dimas, California 91773	One World Trade Center 27 <sup>th</sup> Floor Long Beach, California 90831-2700

s/ Lisa Ranaldo  
Lisa Ranaldo